IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

TUESDAY, THE 21ST AUGUST 2007 / 30TH SRAVANA 1929

MACA.No. 1568 of 2006()

OPMV.140/2003 of MOTOR ACCIDENT CLAIMS TRIBUNAL, OTTAPALAM
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: APPELLANT/3RD RESPONDENT:

UNITED INDIA INSURANCE CO. LTD.,
VADAKKANCHERRY ROAD, KUNNAMKULAM.

BY ADV. SRI.P.V.JYOTHI PRASAD

RESPONDENTS: PETITIONER & RESPONDENTS 1 AND 2:
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1. ALARKAN NAMBOODIRIPAD,S/O K.B.NAMBOODIRIPAD
KODANATTU MANA, MEZHATHOOR, OTTAPALAM TALUK
PALAKKAD DISTRICT

2. RAFEEK,S/O MUTHU
AMBALATHUVEETTIL, PAZHUNNANA, CHOVVANNOOR,THRISSUR
(REMOVED AS PER ORDER DATED 20.8.2007 IN I.A. NO. 1805/2007)

3. K.K. RAVEENDRAN,S/O KUNHUMON
KOTTARAPATT HOUSE, AKKIKAVU, THRISSUR DISTRICT.

BY ADV. SRI.R.VENUGOPAL
SRI.R.SREEHARI

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 21/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.PADMANABHAN NAIR, J.

M.A.C.A No. 1568 of 2006

Dated this the 21st day of August 2007

JUDGMENT

The appeal is heard and disposed of as agreed to by both sides.

2. The 1st respondent filed an Original Petition claiming compensation against respondent Nos. 2 &3 and the appellant It was alleged that he sustained injuries in a motor vehicle accident which took place on 16.09.2002. . Respondents 2 &3 did not appear and contest. The appellant alone contested. It was contended that there was no negligence on the part of the driver of the vehicle. The Tribunal found that the 1st respondent was entitled to get a compensation of Rs. 62,385/-. Though the appellant raised a contention that it was not liable to indemnify the insured as the 2nd respondent driver was not having a valid badge on the date of accident, the same was overruled and the insurer was directed to pay the compensation, in view of the principle laid down in **National Insurance Co.Ltd Vs. Swaran Singh and others (AIR 2004 SC 1531).** Challenging that part of the award this appeal is filed.

3. I do not find any reason to interfere with the finding of the Tribunal that the accident occurred due to the negligence of the driver of the vehicle and the 1st respondent was entitled to get a compensation of

Rs. 62,385/-. So those findings are confirmed .

4. The appellant was made liable to pay the compensation only on the ground that the driver was holding a valid driving licence though he was not in possession of badge. In **Govindankutty Nair Vs. Gopalakrishnan (2000(1) KLT 224**)a Division Bench of this court held that even if the driver is having a valid licence, if he is not possessed of a badge which enables him to drive a commercial vehicle the Insurance Company cannot be made liable. In **National Insurance Co.Ltd Vs. Swaran Singh and others (AIR 2004 SC 1531)** the Supreme Court considered the meaning of the words 'duly licensed' and held that the words 'duly licensed' used in Section 149(2) cannot give meaning of effective licence" used in Section 3. The question was elaborately considered in **National Insurance Co.Ltd Vs.Laxmi Narain Dhut (2007 (2) KLT 470).** & in **National Insurance Co.Ltd Vs.Kusum Rai (2006(2) KLT 300 (SC)**

5. In Swaran singh's case (supra) the Apex Court held that the liability of the Insurance Company vis-a-vis the owner would depend upon the the terms of the policy. If the driver was not holding a badge he is not entitled to drive a commercial vehicle. The insurance company cannot be made liable as held in Govindan kutty Nair's case(Supra). So the finding

of the Tribunal that the appellant is liable to indemnify the owner is liable to be set aside. Considering all aspects of the matter and taking into account the breach of policy conditions, the appellant will have to satisfy the award and then recover the same from the insured.

6. In the result, the appeal is allowed in part. The finding of the Tribunal that the accident occurred due to the negligence of the driver of the vehicle and the 1st respondent is entitled to get Rs. 62,385/- are hereby confirmed. The Insurance company shall satisfy the award and may recover the same from the insured, if so advised.

K.PADMANABHAN NAIR,JUDGE

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